COUNTY OF YORK

2003

LEGISLATIVE PROGRAM

BOARD OF SUPERVISORS

Donald E. Wiggins, Chairman

Walter C. Zaremba, Vice Chairman

James S. Burgett

Sheila S. Noll

Thomas G. Shepperd, Jr.

COUNTY ADMINISTRATOR

James O. McReynolds

COUNTY ATTORNEY

James E. Barnett

Prepared by the Office of the County Attorney

Introduction

The Board of Supervisors is pleased to commend this Legislative Program for consideration by the 2003 General Assembly. It was adopted and endorsed by the Board on October 15, 2002, by Resolution R02-185.

With the support of our legislators, I know that our County government will be improved and the quality of life for our citizens will be enhanced. If, during the course of the session, our legislators have questions concerning the position of the County on legislative matters, they are encouraged to contact James O. McReynolds, our County Administrator, at 890-3320, or James E. Barnett, our County Attorney, at 890-3340, who would be pleased to respond to any questions that you might have with regard to the legislation proposed.

Donald E. Wiggins, Chairman
Board of Supervisors

R02-185

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Resolution

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the 15th day of October, 2002:

Present	Vote
Donald E. Wiggins, Chairman	
Walter C. Zaremba, Vice Chairman	
James S. Burgett	
Sheila S. Noll	
Thomas G. Shepperd, Jr.	

On motion of _____, which carried ___, the following resolution was adopted:

A RESOLUTION APPROVING THE COUNTY'S 2003 LEGISLATIVE PROGRAM

WHEREAS, because of the applicability of Dillon's Rule in Virginia, York County is dependent upon the General Assembly to adopt specific enabling legislation in many instances in order to enable the County to provide efficient and effective services and government to its citizens; and

WHEREAS, the County has developed a Legislative Program for the consideration of the 2003 session of the General Assembly which outlines certain legislative policies which the Board believes ought to guide the General Assembly and proposes certain legislation that would benefit the County; and

WHEREAS, the Board has carefully considered its legislative program, and believes that it is in the best interests of the citizens of York County;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 15th day of October, 2002, that this Board hereby approves the County's 2003 Legislative Program, and commends it to the County's representatives in the General Assembly for action.

BE IT FURTHER RESOLVED that copies of this Resolution and the County's 2003 Legislative Program be forwarded to the County's elected representatives to the General Assembly.

Summary of Legislation and Policies Requested by the County

Impact of State Budget Crisis

The County of York acknowledges the reality and gravity of the fiscal crisis facing the Commonwealth and responds by not requesting any new programs or services or expansion of those presently existing, which would have adverse impact on the Commonwealth's budget. Further, in recognition of the significant contribution of the military to the economic health of the Commonwealth, the County urges continued support for local efforts to monitor the upcoming activities of the 2005 Base Realignment and Closure Commission (BRAC).

Simultaneously, York asks that the General Assembly maintain the vital state and local partnership that exists in York and throughout the Commonwealth and:

? Recognize that local governments cannot absorb the state's budget deficit.

? Recognize that actions taken in recent years have downsized state services while increasing requirements and therefore cost for local governments.

? Maintain current state and local cost-sharing for important services and not shift greater costs to local levels of government through direct actions or through changes in regulations and procedures.

? Either:
  - ? provide local governments with tools for directly generating revenues

    or
  - ? maintain the state's responsibility for assuring that adequate funding is provided to localities to effectively deliver mandated services.

Restore Virginia Juvenile Community Crime Control Act (VJCCCA) Funding at the Earliest Opportunity as the Commonwealth's Fiscal Picture Brightens

? VJCCCA is the Commonwealth's funding stream for the state-local partnership that provides vital programs for youth before the Courts and their families. VJCCCA sustained at 51% reduction during the 2002 Session of the General Assembly. In addition, SABRE funding, which had been used for substance abuse treatment and prevention for juveniles as well as adults, was completely eliminated. This was a staggering reduction that could not be absorbed by the elimination of discretionary spending. Nor can localities, which already have significant amounts of local dollars invested in this partnership, make up the difference. Reductions in staff and program closings have occurred in many localities.

? As Virginia loses valuable service systems for youth and families, seasoned employees will take their experience to other states. It will be nearly impossible to restore important programs if they are closed for long periods.

? As alternative services disappear, anticipate unintended consequences
    ? Increased admissions to secure detention
    ? Increased commitments to state facilities
    ? Likelihood of increased foster care placements
    ? Increases in Comprehensive Services Act (CSA) costs resulting in higher costs for the state as well as localities for services that are less appropriate.

Virginia Juvenile Community Crime Control Act (VJCCCA)

Local Government Coalition

Summary

Statement of Problem

The purpose of the Virginia Juvenile Community Crime Control Act (VJCCCA) is to provide alternatives to secure incarceration in state and local facilities for juvenile offenders while providing for the public safety and assuring that juveniles face appropriate consequences for unlawful behavior. The 2002 General Assembly reduced VJCCCA funding by 51%, which will have a devastating effect on local juvenile justice and child welfare systems. In addition to the reduction of services and loss of extremely capable, seasoned and experienced staff, Virginia localities anticipate "unintended consequences" as follows:

- Increased admissions to secure detention centers and commitments to state facilities.
- Increased incidences of judges taking custody and ordering youths into foster care through the Department of Social Services.
- Increases in the Comprehensive Services Act (CSA) costs due to increased numbers of foster care cases, which then become part of the mandated population and are automatically eligible for services paid through the CSA.

In all instances, costs in these areas will increase for both local and the state government.

Objectives For Fiscal Year 2004

#1: No further reductions	✍ Program was reduced 15 million dollars (51% in FY03). ✍ Additional reductions will do irreparable harm to communities across the state.
#2: Maintain a formula driven allocation process	✍ Identify and support a suitable formula, which honors historical state and local partnerships. ✍ Incrementally grow program to FY02 funding level as economy improves.
#3: Require bi-annual report to General Assembly on program outcomes.	To include: ✍ Accountability measures on programmatic and client outcomes as well as utilization and unit costs. ✍ Recognition of "interconnectivity" between Secretariats of Education, Public Safety and Health & Human Resources i.e. with Mental Health, CSA, Social Services

Members of the VJCCCA Local Government Coalition Include:

Virginia Association of Local Human Service Officials
Virginia Municipal League
Virginia Association of Counties
Virginia Community Residential Care Association
Virginia Juvenile Justice Association
Virginia Council on Juvenile Detention
Virginia Association of Detention Alternatives
Virginia Association of Drug Courts
VJCCCA Program Operators Work Group

Support the Adoption of HB 315, Carried Over from the 2002 Session, to Amend Virginia Code § 59.1-274 to Allow the Establishment of Ten Additional Enterprise Zones in Virginia

The Virginia Enterprise Zone Act (Virginia Code § 59.1-270, *et seq*.) authorizes the Department of Housing and Community Development to designate as many as 60 enterprise zones throughout the State. Any county, city, or town is eligible to apply for one or more enterprise zone designations, although no locality may have more than three enterprise zones. At present, no enterprise zone is located in York County, and all 60 zones have either been designated or the criteria for application exclude York County.

As presently drafted, Virginia Code § 59.1-274 establishes economic criteria for any enterprise zone. For the most part, any area for which designation is sought as an enterprise zone must either (i) have 25% or more of the population with incomes below 80% of the median income of the jurisdiction, or (ii) have an unemployment rate 1.5 times the state average, or (iii) have a demonstrated floor area vacancy rate of industrial and/or commercial properties of 20% or more. However, five of any areas designated as enterprise zones on or after July 1, 1999 must have annual average unemployment rates that are 50% higher than the final statewide average unemployment rate for the most recent calendar year, or be within planning districts that have annual average unemployment rates that are at least 1% greater than the statewide average. Legislation adopted by the 2000 General Assembly, which increased the number of authorized enterprise zones from 55 to 60, required that the additional five zones designated after July 1, 2000 shall be in localities that have annual average unemployment rates that are 50% higher than the statewide average.

At present, there are no designated economic opportunity zones in York County, although portions of the County meet the original criteria for an enterprise zone (but not those heightened requirements imposed in 1999 and 2000 for certain of the zones to be established during or after those years). Nonetheless, the enterprise zone concept, which provides for a number of tax exemptions for new businesses, could provide an important economic incentive for the creation of new businesses in York County as in any jurisdiction. Consequently, we support the amendment of Virginia Code § 59.1-274 to increase the number of enterprise zones authorized in Virginia from 60 to 70, with the additional zones being awarded only to localities that do not already have a zone, and without the high unemployment rate criteria applicable to zones created after July 1, 1999. Legislation to that effect was adopted in 2001 by the House of Delegates as H.B. 351 (copy attached), but was continued to the 2003 session by the Senate Finance Committee. We ask that it be adopted in 2003.

HOUSE BILL NO. 351

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on February 6, 2002)

(Patron Prior to Substitute--Delegate Rapp)

A BILL to amend and reenact § 59.1-274 of the Code of Virginia, relating to enterprise zone designation.

Be it enacted by the General Assembly of Virginia:

1. That § 59.1-274 of the Code of Virginia is amended and reenacted as follows:

§ 59.1-274. Enterprise zone designation.

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be an enterprise zone. Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.

B. The Governor may approve upon the recommendation of the Director of the Department the designation of up to ~~sixty~~ *seventy* areas, of which five shall be designated as provided in subsection C ~~and~~, five shall be designated as provided in subsection D, *and ten shall be designated as provided in subsection E,* as enterprise zones for a period of twenty years. Any county, city, or town shall be eligible to apply for more than one enterprise zone designation; however, each county, city, and town shall be limited to a total of three enterprise zones. One enterprise zone in any county, city or town may consist of two noncontiguous zone areas; however, a joint enterprise zone may consist of the joint zone area and one additional noncontiguous zone area in each of the adjacent jurisdictions that submitted the application for the joint enterprise zone. The size of the enterprise zone shall consist of the total of the noncontiguous zone areas. The noncontiguous zone areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations established by this chapter. Any such area shall consist of contiguous United States census tracts or block groups or any part thereof in accordance with the most current United States Census or with the most current data from the Center for Public Service or the local planning district commission. Any such area seeking designation as an enterprise zone shall also meet at least one of the following criteria: (i) have twenty-five percent or more of the population with incomes below eighty percent of the median income of the jurisdiction, (ii) have an unemployment rate 1.5 times the state average, or (iii) have a demonstrated floor area vacancy rate of industrial and/or commercial properties of twenty percent or more.

C. Five of the areas designated as enterprise zones on or after July 1, 1999, shall be located in localities that (i) have annual average unemployment rates for the most recent calendar

year that are fifty percent higher than the final statewide average unemployment rate for the most recent calendar year or (ii) are within planning districts that have annual average unemployment rates for the most recent calendar year that are at least one percent greater than the final annual statewide average for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

D. Five of the areas designated as enterprise zones on or after July 1, 2000, shall be located in localities that have annual average unemployment rates for the most recent calendar year that are fifty percent higher than the final statewide average unemployment rate for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

E. Ten of the areas designated as enterprise zones on or after July 1, 2002, shall be located in localities that do not have an enterprise zone as of that date. No area shall be designated as an enterprise zone pursuant to this subsection unless it meets the eligibility criteria established in subsection B; except that up to three designations made by the Governor for special economic development needs shall be exempt from the provisions of this subsection.

Increase the Amount of the Retiree Health Insurance Credit for Local and School Board Employees

The Virginia Retirement System has a Retiree Health Insurance Credit Program that allows for a $120 monthly credit on the health insurance premium for retirees from employment with the state. However, the maximum health credit allowed for school division retirees monthly is $75, and for local government retirees and employees of constitutional officers, the maximum health credit is only $45. We feel that the maximum health credit should be the same for employees whether or not they are employed by the state, a school division, a local government, or a constitutional officer. We request that legislation be introduced to allow all retirees from public employment to have the same health credit (currently $120) enjoyed by state retirees. The increase in the credit would be paid for by increases in VRS premiums to local governments and school divisions, and therefore is not anticipated to have any impact on the state budget.

Attached are proposed amendments to Virginia Code §§ 51.1-1401 (as to teachers), 51.1-1402 (as to local government retirees) and 51.1-1403 (as to constitutional officers, their employees, and local social services employees).

Proposed amendment to §§ 51.1-1401, 51.1-1402 and 51.1-1403 relative to health insurance credits.

§ 51.1-1401. Health insurance credits for retired teachers.

A. A teacher, as defined in § 51.1-124.3, retired under the Virginia Retirement System who rendered at least fifteen years of total creditable service under the System shall receive a health insurance credit to his monthly retirement allowance, which shall be applied to reduce the retired member's health insurance premium cost. The amount of each monthly health insurance credit payable under this section shall be ~~two~~four dollars ~~and fifty cents~~ for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of ~~seventy-five~~one hundred twenty dollars; however, each former member whose retirement was for disability shall receive a monthly health insurance credit of ~~seventy-five~~one hundred twenty dollars. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement. The cost of such credit shall be borne by the Commonwealth.

B. In addition to the health insurance credit authorized in subsection A, localities which participate in the Virginia Retirement System may elect to provide an additional health insurance credit of one dollar per month for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of thirty dollars. The costs of such additional health insurance credit shall be borne by the locality.

C. Those retired employees who purchase an alternative personal health insurance policy from a carrier or organization of their own choosing shall be eligible to receive a credit in the amount specified in subsection D. Eligibility for the credit and payment of the credit shall be determined in a manner prescribed by the Virginia Retirement System.

D. The credit shall be in (i) the amount provided in subsection A, or subsection A and subsection B if the additional credit authorized by subsection B is provided or (ii) the amount of premium paid for the personal health insurance policy, whichever is less.

E. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), 2.1 (§ 51.1-211 et seq.), or 3 (§ 51.1-300 et seq.) of Title 51.1 who (i) rendered at least fifteen years of total creditable service as a teacher as defined in § 51.1-124.3 and (ii) after terminating service as a teacher, was employed by a local government that does not elect to provide a health insurance credit under § 51.1-1402, shall be eligible for the credit provided by subsection A and subsection B if provided by the school division from which the service described in clause (i) was rendered, provided that the retired employee is participating in a health insurance plan. The Commonwealth and local school division, if appropriate, shall be charged with the credit as

provided for in subsection F. In such case, the health insurance credit shall be determined based upon the amount of state service or service as a teacher, whichever is greater.

F. The Virginia Retirement System shall (i) actuarially determine the amount necessary to fund all credits provided under this section, (ii) reflect the cost of such credits in the applicable employer contribution rate pursuant to §§ 51.1-145, 51.1-204, and 51.1-304, and (iii) prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance program provided for in this section shall be recovered from the health insurance credit trust fund.

§ 51.1-1402. Health insurance credits for retired local government employees.

A. Retired local government employees, whose localities have elected to participate in the Virginia Retirement System, who have rendered at least fifteen years of total creditable service under the System shall receive a health insurance credit to his monthly retirement allowance, which shall be applied to reduce the retired member's health insurance premium cost, provided the retiree's employer elects to participate in the credit program. The amount of each monthly health insurance credit payable under this section shall be $~~1.50~~4.00 for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of ~~forty-five~~one hundred twenty dollars; however, each former member whose retirement was for disability shall receive a monthly health insurance credit of ~~forty-five~~one hundred twenty dollars. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

B. Those retired employees who purchase an alternative policy from a carrier or organization of their own choosing shall be eligible to receive a credit in the amount specified in subsection C. Eligibility for the credit and payment of the credit shall be determined in a manner prescribed by the Virginia Retirement System.

C. The credit shall be in the amount provided in subsection A or the amount of premium paid for the personal health insurance policy, whichever is less.

D. The cost of the monthly health insurance credit payable under this section shall be borne by the locality.

E. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided under this section, reflect the cost of such credits in the applicable employer contribution rate pursuant to § 51.1-145, and prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance credit program provided for in this section shall be recovered from the health insurance credit trust fund.

§ 51.1-1403. Health insurance credits for retired constitutional officers, employees of constitutional officers, and local social service employees.

A. A local officer, as defined in § 51.1-124.3, or an employee of a local social services board, retired under the Virginia Retirement System who rendered at least fifteen years of total creditable service under the System shall receive a health insurance credit to his monthly retirement allowance, which shall be applied to reduce the retired member's health insurance premium cost. The amount of each monthly health insurance credit payable under this section shall be ~~one dollar and fifty cents~~four dollars for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of ~~forty-five~~one hundred twenty dollars; however, each former member whose retirement was for disability shall receive a monthly health insurance credit of ~~forty-five~~one hundred twenty dollars. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement. The cost of such credit shall be borne by the Commonwealth.

B. In addition to the health insurance credit authorized in subsection A, localities which participate in the Virginia Retirement System may elect to provide an additional health insurance credit of one dollar per month for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of thirty dollars. The costs of such additional health insurance credit shall be borne by the locality.

C. 1. Those retired employees who purchase an alternative personal health insurance policy from a carrier or organization of their own choosing shall be eligible to receive a credit in the amount specified in subdivision C. 2. Eligibility for the credit and payment of the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2. The credit shall be in (i) the amount provided in subsection A, or subsection A and subsection B if the additional credit authorized by subsection B is provided or (ii) the amount of premium paid for the personal health insurance policy, whichever is less.

D. The Virginia Retirement System shall (i) actuarially determine the amount necessary to fund all credits provided under this section, (ii) reflect the cost of such credits in the applicable employer contribution rate pursuant to § 51.1-145, and (iii) prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance program provided for in this section shall be recovered from the health insurance credit trust fund.

Authorize a Demonstration Traffic Signal Photo-Monitoring System

Virginia Code § 46.2-833.01 authorizes certain localities to provide by ordinance for the establishment of a demonstration program of installing traffic signal photo-monitoring systems at up to twenty-five intersections in each locality. Localities which have this authority are the cities of Virginia Beach and Richmond, Fairfax County, and all counties, cities, and towns adjacent to Fairfax. The monitoring systems identify vehicles which run red lights, for example, and authorize their owners to be notified and fined by mail.

The 2000 General Assembly passed legislation (SB 414) which would have added York County and a number of other jurisdictions to the list of localities authorized to conduct photo-monitoring, but it was vetoed by Gov. Gilmore. Numerous bills were submitted in 2001 on behalf of localities seeking authority to install such systems, but all were either defeated, or vetoed by the Governor. Several bills were introduced during the 2002 session, including HB 745 and SB 41, both of which would have added York County (in the case of SB 41, by population brackets) and HB 423 which would have authorized any locality to enforce photo-monitoring after a public hearing. SB 41 actually passed in the Senate, but all three bills were killed by the House Committee on Military Police and Public Safety.

The County's Transportation Safety Commission reports that this program has been successful everywhere it has been implemented. We request that legislation be introduced adding York County to those localities authorized by Virginia Code § 46.2-833.01 to have such a program. Attached are copies of last year's HB 745, HB 423, and SB 41 (and a copy of the Senate's amendments to SB 41), any of which would accomplish that result.

HOUSE BILL NO. 423

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia, relating to use of photo-monitoring systems to enforce traffic light signals.

Patrons-- McQuigg, Lingamfelter and Van Yahres

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-833.01 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-833.01. ~~(Effective until July 1, 2005.)~~ Use of photo-monitoring systems to enforce traffic light signals; penalty.

A. The governing body of any *county*, city, *or town* ~~having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county~~ may, *after holding a public hearing,* provide by ordinance for the establishment of a ~~demonstration~~ *traffic safety* program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time. *No traffic light signal photo-monitoring systems shall be used for the sole purpose of generating revenue.*

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a ~~technician~~ *law-enforcement officer* employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any

proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of §§ 46.2-833, 46.2-835, or § 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection. *No traffic light signal violation photo-monitoring system shall record the image of a vehicle proceeding legally through an intersection, unless the image appears incidental to the recorded image of a vehicle illegally entering an intersection during the red phase of a signal.*

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to §19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or rentor. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the

operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation-monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only ~~an employee~~ *a law-enforcement officer* of the locality may swear to or affirm the certificate required by subsection C.

J. ~~The provisions of this section shall expire on July 1, 2005~~ *When selecting intersections for a traffic light signal violation photo-monitoring system, a locality shall consider factors such as the accident rate for the intersection, the number of red light violations occurring at the intersection, the difficulty experienced by law-enforcement officers in patrol cars or on foot in apprehending violators and the ability of law-enforcement officers to apprehend violators safely within a reasonable distance of the violation.*

K. At any intersection approach in which a traffic light signal photo-monitoring system is used, the locality shall ensure that the timing of the yellow phase of the signal meets or exceeds the minimum time recommended by the Institute of Transportation Engineers.

L. Any locality that uses a photo-monitoring system to enforce traffic light signals shall place conspicuous signs indicating this at or near the boundary of the locality on all primary highways. There shall be a prima facie presumption that such signs were in place at the time of the commission of the violation of failure to comply with a traffic light signal, and a certificate by the chief executive or administrative officer of the locality shall be admissible in evidence to support or rebut the presumption.

M. Prior to or coincident with the implementation or expansion of such a system, a locality shall implement a public awareness program, advising the public that the locality is implementing or expanding a traffic light signal photo-monitoring system.

HOUSE BILL NO. 745

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia, relating to use of photo-monitoring systems to enforce traffic light signals.

Patron-- Barlow

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-833.01 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-833.01. (Effective until July 1, 2005.) Use of photo-monitoring systems to enforce traffic light signals; penalty.

A. The governing body of *James City County, York County, and* any city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to

adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of §§46.2-833, 46.2-835, or § 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or rentor. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to

appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation-monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only an employee of the locality may swear to or affirm the certificate required by subsection C.

J. The provisions of this section shall expire on July 1, 2005.

SENATE BILL NO. 41

Senate Amendments in [ ] -- January 17, 2002

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia, relating to use of photo-monitoring systems to enforce traffic light signals; penalty.

Patron prior to Engrossment -- Senator Marye

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-833.01 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-833.01. Use of photo-monitoring systems to enforce traffic light signals; penalty.

A. The governing body of [*any city having a population of at least 18,000 but less than 19,500,*] [*any county having a population of at least 48,000 but less than 51,000, any county having a population of at least 56,000 but less than 57,500, any city having a population of at least 35,000 but less than 40,000, any city having a population of at least 10,000 but less than 10,300,*] [*any city having a population of at least 180,000 but less than 195,000,*] any city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, [*any city having a population between 45,000 and 46,000,*] *any town having a population greater than 35,000,* [*any county having a population between 75,000 and 80,000,*] any county having the urban county executive form of government, any county adjacent to such county [*including any town therein subject to Section 33.1-224*], and any city or town adjacent to or surrounded by such county [~~except any county having the county executive form of government and the cities surrounded by such county~~] may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation-monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation-monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a ~~technician~~ *law-enforcement officer* employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded

images produced by a traffic light signal violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle *with sufficient resolution to read the license plate on the vehicle*, at the time it is used or operated in violation of §§ 46.2-833, 46.2-835, or § 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection. *No traffic light signal violation-monitoring system shall record the image of a vehicle proceeding legally through an intersection during the green phase of a signal, unless the image appears incidental to the recorded image of a vehicle illegally entering an intersection during the red phase of a signal.*

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner,

lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or rentor. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles ~~which~~ *that* fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation-monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only ~~an employee~~ *a law-enforcement officer* of the locality may swear to or affirm the certificate required by subsection C.

J. At an intersection approach in which a traffic light signal violation-monitoring system is used, a locality shall ensure that the timing of the yellow phase of the signal meets or exceeds the minimum time recommended by the Institute of Transportation Engineers.

K. Any locality that uses a traffic light signal violation-monitoring system to enforce traffic light signals shall place signs indicating such use at or near the boundary of the locality on all primary highways. There shall exist a rebuttable presumption that such signs were in place at the time of the commission of the violation. An affidavit filed by the chief executive or administrative officer of the locality shall be admissible in evidence to support or rebut the presumption.

L. Prior to or coincident with the implementation or expansion of a traffic light signal violation-monitoring system, a locality shall implement a public awareness program, advising the public of such implementation.

~~J. The provisions of this section shall expire on July 1, 2005.~~

[*M.* The provision of this section shall expire on July 1, 2005.]

(SB41)

AMENDMENT(S) PROPOSED BY THE SENATE

TRANSPORTATION

1. Line 13, introduced, after body of
insert
any city having a population of at least 18,000 but less than 19,500,

TRANSPORTATION

2. Line 98, introduced, after line 97
insert
M. The provision of this section shall expire on July 1, 2005.

SEN. DEEDS

1. Line 14, introduced, after less than 225,000,
insert
any city having a population between 45,000 and 46,000,

SEN. DEEDS

2. Line 15, introduced, after *35,000,*
insert
any county having a population between 75,000 and 80,000,

SEN. NORMENT

1. Line 13, introduced, after governing body of
insert
any county having a population of at least 48,000 but less than 51,000, any county having a population of at least 56,000 but less than 57,500, any city having a population of at least 35,000 but less than 40,000, any city having a population of at least 10,000 but less than 10,300,

SEN. NORMENT

2. Line 16, introduced, after such county
strike
except any county having the county executive form of government and the cities surrounded by such county

SEN. MIMS

1. Line 16, introduced, after county

insert

including any town therein subject to Section 33.1-224

SEN. MAXWELL

1. Line 13, introduced, after governing body of

insert

any city having a population of at least 180,000 but less than 195,000,

Request Funding to Support Hampton Roads Planning District Commission Review of Data to be provided to 2005 Base Realignment and Closure Commission

Congress has indicated that there will be another round of the Base Realignment and Closure Commission (BRAC) in 2005. The bases will complete data calls in calendar year 2003. These data calls will be an inventory of public and private infrastructure both on and off the various bases and be key data in the BRAC process. Once the data calls are completed, the bases will be prohibited from communicating substantive information about the data call with localities. During the last BRAC process, the Commonwealth appropriated $200,000, which was matched by an additional $200,000 from the Hampton Roads Planning District Commission (HRPDC). This money was used to hire a consulting firm to, among other things, review the accuracy of the data call information provided by the various Hampton Roads installations and to check the data call information from competing bases in other states. It is vitally important that the data calls and the other BRAC processes be as fair and objective as possible. Therefore it would be wise for the legislature to support the HRPDC efforts.

The General Assembly is requested to appropriate $250,000, which will be matched by an equal amount from the HRPDC for the 2005 BRAC process. This money is needed to be appropriated by July 2003 so that the data call process can be monitored both within Hampton Roads and elsewhere. Although Hampton Roads has been very successful in diversifying its economy, we are still dependent for 20 percent of our gross regional product on the military. There is also a substantial secondary impact from the military because of the relatively high paying jobs that they provide throughout Hampton Roads.

Amend Virginia Code § 46.2-1220 to Enable York County to Regulate Parking within its own Borders

Presently, Virginia Code § 46.2-1220 authorizes any city or town, and 23 named counties, to adopt ordinances providing for the regulation of parking, stopping, and standing of vehicles within their limits, and also to install and maintain parking meters. Three additional counties are authorized to adopt regulations providing for parking, but not for the installation and maintenance of parking meters. The only limitation set out in the statute on the general authority to regulate parking is that any ordinance regulating parking on an interstate highway or on any arterial highway shall be subject to the approval of the Transportation Commissioner. Unfortunately, York County is not one of those counties listed in Virginia Code § 46.2-1220. Consequently, the only authority that York County has to regulate parking on subdivision streets and non-arterial highways in the County (all of which are administered by the Virginia Department of Transportation as part of either the primary or secondary highway system) is found in Virginia Code § 46.2-1222, last readopted by the 1998 General Assembly as Chapter 422. That provision, which is not set out in the Code of Virginia, allows several jurisdictions, including York County, to restrict or prohibit parking on any part of the state secondary system of highways, but only with the prior approval of the Commonwealth Transportation Board. Although the County has been able to obtain such approval in a couple of instances, some years ago with respect to the regulation of parking within the Historic Village of Yorktown, and recently with respect to the parking of commercial vehicles within certain named subdivisions, the process of obtaining such approval is cumbersome, and the outcome of the process is not guaranteed.

We request that York County be given the same authority to regulate parking as is now granted to numerous other Virginia counties.

A bill to amend § 46.2-1220 relative to parking regulations.

§ 46.2-1220. Parking, stopping, and standing regulations in cities, towns, and certain counties; parking meters; presumption as to violation of ordinances; penalty.

The governing bodies of Albemarle, Arlington, Campbell, Chesterfield, Dinwiddie, Fairfax, Greene, Hanover, Henrico, Henry, Isle of Wight, James City, King George, Loudoun, Pittsylvania, ~~and~~ Prince George, Prince William, Roanoke, Rockbridge, Scott, Spotsylvania, Stafford, Tazewell, and York Counties and the governing body of any city or town may by ordinance provide for the regulation of parking, stopping, and standing of vehicles within its limits, including the installation and maintenance of parking meters. The ordinance may require the deposit of a coin of a prescribed denomination, determine the length of time a vehicle may be parked, and designate a department, official, or employee of the local government to administer the provisions of the ordinance. The ordinance may delegate to that department, official, or employee the authority to make and enforce any additional regulations concerning parking that may be required, including, but not limited to, penalties for violations, deadlines for the payment of fines, and late payment penalties for fines not paid when due. In a city having a population of at least 100,000, the ordinance may also provide that a summons or parking ticket for the violation of the ordinance or regulations may be issued by law-enforcement officers, other uniformed city employees, or by uniformed personnel serving under contract with the city. The governing bodies of Augusta, Bath, and Rockingham Counties may by ordinance provide for the regulation of parking, stopping, and standing of vehicles within their limits, but no such ordinance shall authorize or provide for the installation and maintenance of parking meters.

No ordinance adopted under the provisions of this section shall prohibit the parking of two motorcycles in single parking spaces designated, marked, and sized for four-wheel vehicles. The governing body of any county, city, or town may, by ordinance, permit the parking of three or more motorcycles in single parking spaces designated, marked, and sized for four-wheel vehicles.

If any ordinance regulates parking on an interstate highway or any arterial highway or any extension of an arterial highway, it shall be subject to the approval of the Transportation Commissioner.

In any prosecution charging a violation of the ordinance or regulation, proof that the vehicle described in the complaint, summons, parking ticket citation, or warrant was parked in violation of the ordinance or regulation, together with proof that the defendant was at the time the registered owner of the vehicle, as required by Chapter 6 (§ 46.2-600 et seq.) of this title, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who committed the violation. Violators of local ordinances adopted by Chesterfield County pursuant to this section shall be subject to a civil penalty not to exceed seventy-five dollars, the proceeds from which shall be paid into the locality's general fund.

Amend Virginia Code §§ 15.2-2214 and 15.2-2309 to Allow Planning Commissions and Boards of Zoning Appeals to Establish Alternate Meeting Dates in the Event of a Meeting Cancellation Due to a Weather or other Emergency

Virginia Code § 15.2-1416 allows a county board of supervisors at its annual meeting to fix not only the dates for regular meetings, but also the day or days to which a regular meeting will be continued if the board is unable to meet because of weather or other conditions. In such event, the meeting may be automatically continued to the alternate date (with adequate notice to the press), and all public hearings and other matters required to be publicly advertised can be continued to the alternate date without further advertising. That provision adds a great deal of flexibility to a county board of supervisors, which can react to a weather emergency without substantially delaying any advertised public hearings. Unfortunately, there is no similar language granting the same kind of flexibility to planning commissions or boards of zoning appeals.

Attached are proposed amendments to Virginia Code § 15.2-2214 relative to meetings of planning commissions, and § 15.2-2309 relative to meetings of boards of zoning appeals, granting to those bodies the same authority to schedule alternate meeting dates as is currently allowed to county boards of supervisors.

A bill to amend § 15.2-2214 relative to planning commission meetings.

§ 15.2-2214. Meetings.

The local planning commission shall fix the time for holding regular meetings. Commissions shall meet at least every two months. However, in any locality with a population of not more than 7,500, the commission shall be required to meet at least once each year.

Special meetings of the commission may be called by the chairman or by two members upon written request to the secretary. The secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

The commission may also fix the day or days to which a regular meeting shall be continued if the chairman or vice chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

A bill to amend §§ 15.2-2309 and 15.2-1416 relative to powers and duties of boards of zoning appeals and regular meetings.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

a. That the strict application of the ordinance would produce undue hardship;

b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman or vice chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the hearing. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously

advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Amend Virginia Code §§ 15.2-2254 (5) and 17.1-252 to Authorize Circuit Court Clerks to Require Local Government Review and Approval of all Plats Prior to Recordation, to Ensure Compliance with Subdivision Ordinances and Recording Statutes

Virginia Code § 15.2-2254 (5) states that no clerk shall record a subdivision plat until the plat has been approved as required by applicable statutes and local subdivision ordinances. Moreover, Virginia Code § 17.1-252 requires that in those jurisdictions (such as York County) which have instituted a "unique parcel identification system," the clerk shall require that any deed or other instrument relating to an interest in real property shall display the correct tax map or other parcel identification number. Recently, in order to assure compliance with these statutes, the Clerk of the York County Circuit Court promulgated a requirement that all plats must be reviewed by appropriate York County governmental officials prior to recordation among the court's land records, to ensure that the plat did not attempt to create an unlawful subdivision, and that the plat properly depicted parcel identification numbers, such as tax map parcel numbers and G-PIN numbers. We seek suitable amendments to the Code of Virginia to clarify that the clerk has proper authority to impose such a requirement. Plats which have proceeded through the County's subdivision approval process will, of course, already bear the stamp of the County's subdivision agent, and will need no further review. Occasionally, however, the clerk is presented with a plat which depicts property lines which, if given legal effect, would create an unimproved subdivision of land, but which have not been reviewed by the County's subdivision agent. Such plats may not be self-identified as subdivision plats, and it is unlikely that the clerk's office will be able to recognize such a plat as creating an unlawful subdivision. The clerk's office also does not have the ability, without support from the locality's assessor's office or mapping department, to determine whether the proper parcel identification number has been accurately shown. Consequently, the York County Circuit Court Clerk (and, to the best of our knowledge, at least several other clerks throughout Virginia) have attempted to ensure compliance with their statutory obligations by requiring a review of all plats by the locality prior to recordation. In York County, in the vast majority of cases, that review can be accomplished in a matter of minutes by the County's Office of Geographic Information Services (that is, our mapping office) which can quickly compare the boundary lines depicted on any plat to the County's own maps to verify whether the plat attempts to create an unapproved subdivision, and verify the accuracy of all parcel identification numbers.

Unfortunately, however, the authority of a clerk to require such local government review is not clearly stated in the statutes, and there is a dispute among the clerks of the various circuit courts in the state as to whether the authority to do so actually exists. Attached are proposed revisions to Virginia Code §§15.2-2254 (5) and 17.1-252 which would clarify the

authority of the clerk of any circuit court in the Commonwealth to require such local government review of plats. Without such authority, we fear that the clerk will be unable to ensure compliance with those very statutes.

Proposed amendment of § 15.2-2254.

§ 15.2-2254. Statutory provisions effective after ordinance adopted.

After the adoption of a subdivision ordinance in accordance with this chapter, the following provisions shall be effective in the territory to which the ordinance applies:

1. No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of this article and of the subdivision ordinance.

2. No plat of any subdivision shall be recorded unless and until it has been submitted to and approved by the local planning commission or by the governing body or its duly authorized agent, of the locality wherein the land to be subdivided is located; or by the commissions, governing bodies or agents, as the case may be, of each locality having a subdivision ordinance, in which any part of the land lies.

3. No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto. However, nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.

4. Any person violating the foregoing provisions of this section shall be subject to a fine of not more than $500 for each lot or parcel of land so subdivided, transferred or sold. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or remedies herein provided.

5. No clerk of any court shall file or record a plat of a subdivision required by this article to be recorded until the plat has been approved as required herein. The penalties provided by § 17.1-223 shall apply to any failure to comply with the provisions of this subsection. *In order to assure compliance with this subsection, the clerk of any circuit court may require that any plat, prior to recordation, shall be reviewed by an appropriate official of the locality in which the land shown on the plat is located, and certified by such official that the plat does not depict any unlawful subdivision of land.*

§ 17.1-252. Indexing by tax map reference number.

Circuit court clerks in those localities with a unique parcel identification system shall require that any deed or other instrument conveying or relating to an interest in real property bear, on the first page of the deed or other instrument, the tax map reference number or numbers, or the parcel identification number (PIN) or numbers, of the affected parcel or parcels. Upon admitting the deed or other instrument to record, the clerk may, in addition to any other indexing required by law, index the deed or other instrument by the tax map reference number or numbers or by the parcel identification number or numbers. *In*

order to assure compliance with this section, the clerk of any circuit court may require that any plat, prior to recordation, shall be reviewed and approved by an appropriate official of the locality in which the land is shown on the plat is located, to certify the accuracy of all tax map reference or other identification numbers shown on the plat.

Adopt Enabling Legislation to Authorize Counties to Impose Local Taxes on Cigarettes

Currently Code of Virginia §§ 58.1-3830 through 3832 allow the imposition of local cigarette taxes only by Fairfax and Arlington counties, and by those localities that imposed such a tax prior to January 1, 1977. Cities and towns, however, are generally granted authority to impose excise taxes on cigarettes pursuant to Code of Virginia § 58.1-3840. Consequently, this particular revenue opportunity is inexplicably granted to some, but not all, of Virginia's localities. As a matter of general tax policy, we believe that the taxing authorities of Virginia's various localities, whether they are cities, towns or counties, ought to be equalized. Specifically with respect to the cigarette tax, we wish to endorse a resolution recently adopted by the County Board of Supervisors of Isle of Wight County (copy attached) asking that the Virginia Association of Counties request, and the Virginia General Assembly adopt, enabling legislation to provide all counties with authority to impose local taxes on the sale of cigarettes. Particularly in light of the current state budget fiscal crisis, we believe that local governments ought to be empowered, uniformly throughout the state, with any taxing authority which the General Assembly has heretofore deemed beneficial to bestow on some, but not all, of Virginia's localities.